

ORIGINAL

MEMORANDUM



30

TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

DATE: February 5, 2010

RE: STAFF REPORT FOR ADAMAN MUTUAL WATER COMPANY FOR  
APPROVAL TO ISSUE STOCK DOCKET NO. W-01997A-09-0297

Attached is the Staff Report for Adaman Mutual Water Company notice of intent to issue stock. Staff recommends authorization to issue stock and denial of approval of the Plan of Reorganization.

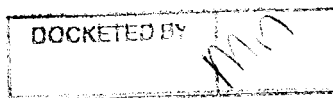
Any party to this procedure who wishes may file comments to the Staff Report with the Commission's Docket Control by 4:00 p.m. on or before February 19, 2010.

SMO:JCM:red

Originator: Juan C. Manrique

Attachment: Original and thirteen copies

Arizona Corporation Commission  
**DOCKETED**  
FEB - 5 2010



RECEIVED  
2010 FEB - 5 1 A 10: 49  
AZ CORP COMMISSION  
DOCKET CONTROL

Service List for: Adaman Mutual Water Company  
Docket No. W-01997A-09-0297

Ms. Michele Van Quathem  
Ryley Carlock & Applewhite  
One North Central  
Suite 1200  
Phoenix, Arizona 85004-4417

Ms. Janice Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Steven M. Olea  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

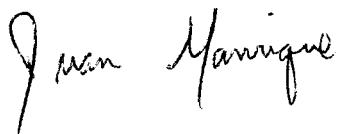
**ADAMAN MUTUAL WATER COMPANY  
DOCKET NO. W-01997A-09-0297**

**APPLICATION FOR APPROVAL TO ISSUE STOCK**

**FEBRUARY 5, 2010**

## STAFF ACKNOWLEDGMENT

The Staff Report for Adaman Mutual Water Company Docket No. W-01997A-09-0297 is the responsibility of the Staff member listed below: Juan C. Manrique is responsible for the review and financial analysis of the Company's application.

A handwritten signature in black ink, reading "Juan Manrique". The signature is written in a cursive style with a large initial "J" and "M".

Juan C. Manrique  
PUBLIC UTILITIES ANALYST I

**EXECUTIVE SUMMARY  
ADAMAN MUTUAL WATER COMPANY  
DOCKET NO. W-01997A-09-0297**

On June 4, 2009, Adaman Mutual Water Company ("Adaman" or "Company"), an Arizona non-profit and Class "C" Public Service Corporation located in Litchfield Park, Arizona, filed a notice of intent to reorganize into a for-profit "C" Arizona Corporation with the Arizona Corporation Commission ("Commission" or "ACC"). On June 12, 2009, Adaman filed an amended application and requested approval of its Agreement and Plan of Reorganization ("Plan") effective January 1, 2010.

According to the application, Adaman intends for its members to exchange membership interests in the Company for 2,486.68 shares of common stock. Every full and partial share corresponds to each member's ownership of real property within the Company's service area. Also, because each share is tied to real property ownership, shares will only be transferrable upon the sale and transfer of land. The Company is also requesting approval of its Plan of Reorganization.

The Company states that the motivation behind the reorganization to a for-profit "C" Corporation is to sell its excess water on the wholesale market. According to the application, the sales of wholesale water will allow Adaman to make capital improvements to its plant without subjecting its members to substantial rate increases. The Company also states that by reorganizing into a for-profit Corporation, the individual members are able to benefit from possible condemnation proceedings by receiving distributions of condemnation payments.

Adaman also requests that any authority granted by the Commission in this proceeding be effective as of January 1, 2010, to avoid filing two tax returns.

A.R.S. § 40-301 states that public service corporations must seek Commission approval in order to issue stocks.

A.R.S. § 40-302 states that public service corporations seeking to issue stocks must provide the Commission the purpose for such stock issuances.

A.R.S. § 10-1001 states that a "corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision that is not required in the articles of incorporation." The Company's application includes a copy of the Plan between the Board of Directors and its members dated April 7, 2009.

A.R.S. § 10-1003 states that a "corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to shareholders." The Company's amended application includes a copy of the First Amendment to Agreement and Plan of Reorganization that places conditions on the effective date of the Plan. One of those conditions is "approval of this Plan and the transactions contemplated hereby by the ACC; provided that in

no event shall the Plan become effective, unless an order is entered by the ACC, as required by law, authorizing the Plan and the transactions contemplated hereby (the 'Effective Time')."

Staff calculated Adaman's capital structure as of December 31, 2008, to consist of 0.3 percent short-term debt, 0.0 percent long-term debt 86.4 percent equity, 10.9 percent Advances In Aid of Construction ("AIAC") and 2.4 percent Contributions In Aid of Construction ("CIAC"). AIAC refund obligations are preserved by the reorganization plan.

Staff concludes that the Plan is within Adaman's corporate powers, is compatible with the public interest, will not impair its ability to provide services and is consistent with sound financial practices.

Staff further concludes that the Company does not currently have on file an authorized wholesale water tariff, which it must obtain through an appropriate proceeding (i.e., a rate application) prior to selling water to wholesale buyers.

Staff further concludes that, since Adaman is not a Class A investor-owned utility, Arizona Administrative Code ("A.A.C.") R14-2-803 is not applicable to Adaman, and approval of Adaman's Plan, including its First Amendment, is unnecessary; accordingly, Staff does not recommend approval.

Staff recommends authorizing Adaman to issue 2,486.68 shares of common stock for the purpose of exchanging for equal numbers of full and partial membership interests pursuant to Adaman's Plan.

Staff further recommends authorizing Adaman to engage in any transaction and to execute any documents necessary to effectuate the authorizations granted.

## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
INTRODUCTION .....	1
PUBLIC NOTICE .....	1
BACKGROUND .....	1
PURPOSE AND DESCRIPTION OF PROPOSED REORGANIZATION.....	1
REORGANIZATION ANALYSIS.....	2
COMPLIANCE.....	3
STAFF CONCLUSIONS AND RECOMMENDATIONS .....	3

### **SCHEDULE**

FINANCIAL ANALYSIS.....	Schedule JCM -1
-------------------------	-----------------

### **ATTACHMENTS**

AFFIDAVIT OF PUBLICATION.....	Attachment A
-------------------------------	--------------

## INTRODUCTION

On June 4, 2009, Adaman Mutual Water Company ("Adaman" or "Company"), an Arizona non-profit and Class "C" Public Service Corporation<sup>1</sup> located in Litchfield Park, Arizona, filed a notice of intent with the Arizona Corporation Commission ("Commission") to reorganize into a for-profit "C" Arizona Corporation. On June 12, 2009, Adaman filed an amended application and requested approval of its Agreement and Plan of Reorganization ("Plan") effective January 1, 2010.

## PUBLIC NOTICE

On October 7, 2009, the Company filed an affidavit of publication verifying public notice of its application. The Company published notice of its application in *The Record Reporter* on October 5, 2009. *The Record Reporter* is a newspaper of general circulation published Monday, Wednesday and Friday in the County of Maricopa, State of Arizona. The affidavit of publication is attached along with a copy of the Notice.

## BACKGROUND

Adaman's business office is located at 16251 West Glendale Avenue, Litchfield Park, Arizona 85340. The Company owns and operates a water utility in and around the City of Litchfield Park, Maricopa County, Arizona. The Company provides service to approximately 254 customers.

The Company is owned and operated by its members.

## PURPOSE AND DESCRIPTION OF PROPOSED REORGANIZATION

Adaman's Plan provides for its members to exchange membership interests in the Company for 2,486.68 shares of common stock. Every full and partial share corresponds to each member's ownership of real property within the Company's service area. Also, because each share is tied to real property ownership, shares will only be transferrable upon the sale and transfer of land.

The application asserts that the reorganization to a for-profit "C" Corporation is necessary to allow it to sell its excess water on the wholesale market and provide the means to make capital improvements to its plant without subjecting its members to substantial rate increases. The Company further asserts that reorganizing into a for-profit Corporation enables the individual members to receive distributions of condemnation payments in the event of condemnation of its assets--a benefit forbidden for non-profit entities under existing law.

---

<sup>1</sup> Adaman reported \$299,204 of Operating Revenue for the year 2008.



Adaman also requests that any authority granted by the Commission in this proceeding be effective as of January 1, 2010, to avoid filing two tax returns.

## REORGANIZATION ANALYSIS

A.R.S. § 40-301 states that public service corporations must seek Commission approval in order to issue stocks.

A.R.S. § 40-302 states that public service corporations seeking to issue stocks must provide the Commission the purpose for such stock issuances.

A.R.S. § 10-1001 states that a "corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision that is not required in the articles of incorporation." The Company's application includes a copy of the Agreement and Plan of Reorganization between the Board of Directors and its members dated April 7, 2009, as an attachment to its application.

A.R.S. § 10-1003 states that a "corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to shareholders." The Company's amended application includes a copy of the First Amendment to Agreement and Plan of Reorganization that places conditions on the effective date of the Plan. One of those conditions is "approval of this Plan and the transactions contemplated hereby by the ACC; provided that in no event shall the Plan become effective, unless an order is entered by the ACC, as required by law, authorizing the Plan and the transactions contemplated hereby (the 'Effective Time').".

Title A, Article 8 of the Arizona Administrative Code ("A.A.C.") requires all Class A<sup>2</sup> investor-owned utilities under the jurisdiction of the Commission to notify the Commission's Utilities Division in writing at least 120 days prior to reorganizing an existing utility holding company.<sup>3</sup> Since Adaman is not currently and will not become as a direct result of the reorganization a Class A investor-owned utility, Staff finds that this requirement is not applicable to this application.

Schedule JCM-1 presents Adaman's capital structure as of December 31, 2008. Column [A] illustrates that Adaman's existing capital structure consists of 0.3 percent short-term debt, 0.0 percent long-term debt 86.4 percent equity, 10.9 percent Advances In Aid of Construction ("AIAC") and 2.4 percent Contributions In Aid of Construction ("CIAC"). The reorganization plan will have no effect on the Company's capital structure. AIAC refund obligations are preserved by the reorganization plan.

---

<sup>2</sup> A.A.C. R14-2-802.

<sup>3</sup> A.A.C. R14-2-803.

## **COMPLIANCE**

A check of the Compliance Database indicates that there are currently no delinquencies for Adaman Mutual Water Company.

## **STAFF CONCLUSIONS AND RECOMMENDATIONS**

Staff concludes that the Plan is within Adaman's corporate powers, is compatible with the public interest, will not impair its ability to provide services and is consistent with sound financial practices.

Staff further concludes that the Company does not currently have on file an authorized wholesale water tariff, which it must obtain through an appropriate proceeding (i.e., a rate application) prior to selling water to wholesale buyers.

Staff further concludes that since Adaman is not a Class A investor-owned utility, A.A.C. R14-2-803 is not applicable to Adaman, and approval of Adaman's Plan, including its First Amendment, is unnecessary; accordingly, Staff does not recommend approval.

Staff recommends authorizing Adaman to issue 2,486.68 shares of common stock for the purpose of exchanging for equal numbers of full and partial membership interests pursuant to Adaman's Plan.

Staff further recommends authorizing Adaman to engage in any transaction and to execute any documents necessary to effectuate the authorizations granted.

**FINANCIAL ANALYSIS**

	[A] <sup>1</sup> <u>12/31/2008</u>	
Short-term Debt	\$1,387	0.3%
Long-term Debt	\$0	0.0%
Common Equity	\$445,512	86.4%
Advances in Aid of Construction	\$56,454	10.9%
Contributions in Aid of Construction	\$12,425	2.4%
Total Capital	\$515,778	100.0%

<sup>1</sup> Column [A] is based on Adaman's financial information for the year ended December 31, 2008.

ORIGINAL

RECEIVED

1 **RYLEY CARLOCK & APPLEWHITE**  
 2 One North Central Avenue, Suite 1200  
 3 Phoenix, Arizona 85004-4417  
 Telephone: 602/258-7701  
 Telecopier: 602/257-9582

2009 OCT -7 P 1:47

AZ CORP COMMISSION  
DOCKET CONTROL

4 Michele Van Quathem - (Bar No. 019185)  
 mvanquathem@rcalaw.com

5 James E. Brophy - (Bar No. 003764)  
 6 jbrophy@rcalaw.com

7 Attorneys for Adaman Mutual Water Company

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9  
 10 **IN THE MATTER OF THE APPLICATION OF**  
 11 **ADAMAN MUTUAL WATER COMPANY FOR**  
 12 **APPROVAL TO ISSUE STOCK**

Docket No. W-01997A-09-0297

13 **NOTICE OF FILING**  
 14 **AFFIDAVIT OF PUBLICATION**

15 Adaman Mutual Water Company, through its undersigned counsel, hereby submits this  
 16 Notice of Filing the attached Affidavit of Publication in the above-referenced matter.

17  
 18 DATED this 7th day of October 2009.

19  
 20 RYLEY CARLOCK & APPLEWHITE

21  
 22  
 23 Atty. General Commission

RECEIVED

OCT -7 2009

DOCKETED MM

By

*Michele Van Quathem*  
 Michele Van Quathem, Atty. No. 019185  
 James E. Brophy, Atty. No. 3764  
 One North Central Avenue, Suite 1200  
 Phoenix, Arizona 85004-4417  
 Phone: (602) 440-4873  
 Fax: (602) 257-6973  
 Attorneys for Adaman Mutual Water  
 Company

1 An original and thirteen copies of the  
2 foregoing filed this 7th day of October 2009  
with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington St.  
Phoenix, Arizona 85007

6 Copies of the foregoing mailed this 7<sup>th</sup> day  
7 of October 2009 to:

8 Juan Manrique  
9 Utilities Division  
Arizona Corporation Commission  
10 1200 W. Washington St.  
11 Phoenix, Arizona 85007

Charles Hains, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, Arizona 85007

12 Belinda Martin  
13 Hearing Division  
Arizona Corporation Commission  
14 1200 W. Washington St.  
15 Phoenix, Arizona 85007

16  
17 By Joyce Heick  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE RECORD REPORTER

~ SINCE 1914 ~

1505 N CENTRAL AVE #200, PHOENIX, AZ 85004-1725

Telephone (602) 417-9900 / Fax (602) 417-9910

Publishing for Maricopa  
and Pima Counties

Leslie Brualt  
RILEY CARLOCK & APPLEWHITE / EMA  
1 N CENTRAL AVE #1200  
PHOENIX, AZ - 85004-4417

RR# 1705538

PUBLIC NOTICE OF AN  
APPLICATION FOR AN ORDER  
AUTHORIZING THE ISSUANCE OF  
STOCK PURSUANT TO THE  
AGREEMENT AND PLAN OF  
REORGANIZATION BY ADAMAN  
MUTUAL WATER COMPANY

Adaman Mutual Water Company ("Company") filed an Application with the Arizona Corporation Commission ("Commission") for an order authorizing the Applicant to issue 2,486.88 shares of common stock in conjunction with Adaman's Plan of Reorganization as a for-profit Arizona corporation. This common stock will be owned proportionally to each shareholder's ownership of land within the Company's service area, just as current voting membership interests are proportional to ownership of land within the Adaman service area. The application is available for inspection during regular business hours at the office of the Commission in Phoenix, Arizona, and the Company's offices in Litchfield Park, Arizona. Intervention in the Commission's proceedings on the application shall be permitted to any person entitled by law to intervene and having a direct substantial interest in this matter. Persons desiring to intervene must file a Motion to Intervene with the Commission which must be served upon applicant and which, at a minimum, shall contain the following information:

1. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different than the intervenor.
  2. A short statement of the proposed intervenor's interest in the proceeding.
  3. Whether the proposed intervenor desires a formal evidentiary hearing on the application and the reasons for such a hearing.
  4. A statement certifying that a copy of the Motion to Intervene has been mailed to Applicant.
- The granting of Motions to Intervene shall be governed by A.A.C. R14-3-105, except that all Motions to Intervene must be filed on, or before, the 15th day after this notice.

10/5/09

RR-1705538#

AFFIDAVIT OF PUBLICATION

Reference #: 101344.4

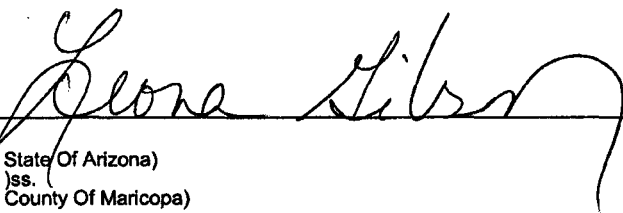
Notice Type: MN - MISCELLANEOUS NOTICE

Ad Description: ADAMAN WATER PUBLIC NOTICE

I, Leona Gibson, am authorized by the publisher as agent to make this affidavit. Under oath, I state that the following is true and correct.

THE RECORD REPORTER is a newspaper of general circulation published Monday, Wednesday and Friday except legal holidays, in the County of Maricopa (also publishing for Pima County), State of Arizona. The copy hereto attached is a true copy of the advertisement as published on the following dates:

10/05/2009

  
State Of Arizona)  
)ss.  
County Of Maricopa)

Subscribed and sworn to before me on the 5th day of October, 2009





DIANE M. HEUEL  
Notary Public—Arizona  
Maricopa County  
Expires 10/31/2010

\* A 0 0 0 0 0 1 3 6 6 3 8 0 \*